

UNITED STATES

v.

SALIM AHMED HAMDAN

)
)
) DEFENSE REQUEST FOR
) WITNESS IN MOTION HEARING
) ON GENEVA CONVENTIONS
) AND COMMON ARTICLE 3:
) ANNE-MARIE SLAUGHTER
)
) 18 October 2004
)

1. Witness Request – Anne-Marie Slaughter – U.S. v. Hamdan.
2. Anne -Marie Slaughter is the Dean of the Woodrow Wilson School of Foreign Affairs at Princeton University. Her telephone number is XXXX. Her e-mail address is XXXX.
3. Dean Slaughter is the President of the American Society of International Law. She is the nation's preeminent expert on international law. She has published widely in the field. Dean Slaughter will explain why the military commission as it is presently formed violates current international law and is thus not properly constituted and void.
4. Civilian Defense Counsel has spoken with Dean Slaughter and has read her publications.
5. The testimony of Dean Slaughter is to be used for Mr. Hamdan's motion regarding two motions: Article 103 of the Geneva Convention (D15) and Common Article 3 of the Geneva Convention (D23). She may also be referenced in the motion for dismissal for lack of subject-matter jurisdiction (D17).
6. Civilian Defense Counsel had a phone conversation with Dean Slaughter on 8 October 2004, and she indicated that she would be available on 8 November 2004 to testify at Guantanamo.
7. Civilian Defense Counsel believes that the Commission would greatly benefit from the live testimony of Dean Slaughter, as the leading expert in international law in America today. Dean Slaughter would be in a position to react to the arguments advanced in the proceedings by both sides as to the international law violations, if any, for the Military Commissions and how they bear on the proceedings of the commissions. Further, the Defense does not agree to an alternative to live testimony as the issues are case dispositive and we cannot possibly contemplate all questions the Commission Members may have.
8. No other witness can be called to attest to the relationship between international law and military commissions. Dean Slaughter is the leading expert in the field.
9. This is an expert witness request. Dean Slaughter's views are authoritative on the questions raised in these motions. They can also serve as a ballast for the entire commission against the

influence of the sole member of the Commission who has a law degree. We do not mean to suggest that that individual is likely to rule one way or the other, rather, we simply point out that providing the commission with access to the leading law professors with expertise in the world on the complicated legal questions that are before the commission is essential to providing the full commission with the information necessary to make an informed decision. In this respect, the commission is similar to the United States Congress' calling of expert witnesses who are law professors during impeachment trials to help them understand what the law is. Without access to these witnesses, a tremendous risk exists that the commission will not reach a full and fair judgment of law.

10. We submit no other matters for your consideration.

NEAL KATYAL
Civilian Defense Counsel

Attachments:

1. Defense Request for Expert Witness – Anne-Marie Slaughter – 11 Oct 04
2. Defense Response to Prosecution Motion Barring Expert Witnesses, 14 Oct 04

UNITED STATES

v.

SALIM AHMED HAMDAN

)
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) DEFENSE REQUEST FOR
) WITNESS ON GENEVA
) CONVENTIONS/COMMON ARTICLE 3
) ANNE-MARIE SLAUGHTER
)
)
) 11 October 2004
)

1. Witness Request – ANNE-MARIE SLAUGHTER – U.S. v. Hamdan.

2. ANNE-MARIE SLAUGHTER is the Dean of the Woodrow Wilson School of Foreign Affairs at Princeton University. Her contact information is set forth on her curriculum vitae, which is attached.

3. Dean Slaughter is the President of the American Society of International Law. She is the nation's preeminent expert on international law. She has published widely in the field. Dean Slaughter will explain why the military commission as it is presently formed violates current international law and is thus not properly constituted and void. She will explain not only the law, but also the history and treatment of prisoners of war over time.

4. Civilian defense counsel has spoken with Dean Slaughter and has read her publications.

5. The testimony of Dean Slaughter is to be used for Mr. Hamdan's motion regarding two motions, Article 103 of the Geneva Convention and Common Article 3 of the Geneva Convention. It will also be referenced in the motion for dismissal for lack of subject-matter jurisdiction.

6. Civilian defense counsel had a phone conversation with Dean Slaughter on 8 October, 2004, and she indicated that she would be available on November 8, 2004 to testify at Guantanamo.

7. Civilian defense counsel believes that the commission would greatly benefit from the live testimony of Dean Slaughter, as the leading expert in international law in America today. Dean Slaughter would be in a position to react to the arguments advanced in the proceedings by both sides as to the international law violations, if any, for the military commissions and how they bear on the proceedings of the commissions. The Defense does not agree to an alternative to live testimony as the issues are case dispositive and we cannot possibly contemplate all questions the Commission Members may have.

8. No other witness can be called to attest to the relationship between international law and military commissions. Dean Slaughter is the leading expert in the field.

9. This is an expert witness request. Dean Slaughter's views are authoritative on the questions raised in these motions. They can also serve as a ballast for the entire commission against the influence of the sole member of the commission who has a law degree. We do not mean to suggest that that individual is likely to rule one way or the other, rather, we simply point out that providing the commission with access to the leading law professors with expertise in the world on the complicated legal questions that are before the commission is essential to providing the full commission with the information necessary to make an informed decision. In this respect, the commission is similar to the United States Congress' calling of expert witnesses who are law professors during impeachment trials to help them understand what the law is. Without access to these witnesses, a tremendous risk exists that the commission will not reach a full and fair judgment of law.

10. We submit no other matters for your consideration.

Neal Katyal
Civilian Defense Counsel

Note:

The Defense also included its reply to the Prosecution Motion to Barring Expert witnesses.

A copy of that document is the same as Motions Inventory number P8 and is also an attachment to Motions Inventory D24.

The document referred to above has been removed from this file solely for purposes for economy and because it is already a part of the record.

XXXX

Assistant to the Presiding Officer.

ANNE-MARIE SLAUGHTER

PRINCETON UNIVERSITY, WOODROW WILSON SCHOOL OF PUBLIC AND INTERNATIONAL
AFFAIRS

PHONE XXXX • FAX XXXX • E-MAIL XXXX

PRESENT POSITION

Dean, Woodrow Wilson School of Public and International Affairs
Princeton University

President, American Society of International Law

Founder and Faculty Director, Princeton Colloquium on International Affairs

EDUCATION

OXFORD UNIVERSITY

D.Phil. in International Relations, 1992

Dissertation Topic: "Conceptions of the German Question in West German Domestic Politics, 1975-1985"

HARVARD LAW SCHOOL

J. D. *cum laude*, 1985

OXFORD UNIVERSITY

M.Phil. in International Relations, 1982

PRINCETON UNIVERSITY

A.B. *magna cum laude*, 1980

Majors: Woodrow Wilson School of Public and International Affairs
European Cultural Studies

EMPLOYMENT

1994-2002

J. Sinclair Armstrong Professor of International, Foreign & Comparative Law

Harvard Law School

Subjects: International Litigation and Arbitration, International Law and International Relations, Foreign Affairs and the Constitution, Civil Procedure, Perspectives on American Law.

Professor

John F. Kennedy School of Government, Harvard University

Director, Graduate and International Legal Studies

Harvard Law School

1993-94

Professor of Law and International Relations

University of Chicago Law School

Spring 1993

Visiting Professor of Law

Harvard Law School

1989-93

Assistant Professor of Law and International Relations

University of Chicago Law School

1988-89

Fellow in International Law

Harvard Law School

1984-88

Assistant to Professor Abram Chayes: Legal assistance on a variety of international cases, including litigation involving Nicaragua, the Philippines, Egypt, and the Marshall Islands. Selecting and editing materials on strategic weapons management (1985)

Writing and editing materials for a course in International Legal Process (1985)

1986-87

Assistant to Professor Hal S. Scott

Legal assistance on cases and academic studies involving U.S. and foreign banking law

1985-86

Ford Fellow in European Society and Western Security, The Center for International Affairs, Harvard University

1984

Summer Associate

Simpson, Thacher & Bartlett, New York, NY

1983

Summer Associate

Bingham, Dana & Gould, Boston, MA

1979

Summer Intern

Senate Foreign Relations Committee, Washington DC

HONORS

Invited Lecturer, Hague Academy of International Law, Millennial Lectures, Summer 2000.

Invited Lecturer, Nordic Academy of International Law, Summer 2000.

Francis Deak Prize, awarded by the AMERICAN JOURNAL OF INTERNATIONAL LAW for *International Law and International Relations Theory: A Dual Agenda* (prize shared with Steven Ratner), 1994.

Allen Chair Professor, T.C. Williams School of Law, University of Richmond, 1994.

Francis Deak Prize, awarded by the AMERICAN JOURNAL OF INTERNATIONAL LAW for *The Alien Tort Statute and Judiciary Act of 1789: A Badge of Honor*, 1990.

Russell Baker Scholar, University of Chicago Law School, 1990.

Certificate of Distinction in Teaching, Harvard-Danforth Center for Teaching and Learning, 1984.

Princeton University Daniel M. Sachs Memorial Scholarship (for two years of study at Oxford University) Phi Beta Kappa, 1980.

Woodrow Wilson School R.W. van de Velde Award, 1979.

BOOKS AND JOURNAL SYMPOSIA

International Law and International Relations Theory: Millennial Lectures, Hague Academy of International Law, Summer 2000.

Legalization and World Politics: A Special Issue of International Organization, Judith Goldstein, Miles Kahler, Robert O. Keohane, and Anne-Marie Slaughter, eds., 54 INTERNATIONAL ORGANIZATION (2000).

Symposium on Method in International Law: A Special Issue of the American Journal of International Law, Steven R. Ratner and Anne-Marie Slaughter, eds., 93 AMERICAN JOURNAL OF INTERNATIONAL LAW (1999).

THE EUROPEAN COURTS AND NATIONAL COURTS: DOCTRINE AND JURISPRUDENCE (Anne-Marie Slaughter, Alec Stone Sweet, and Joseph H.H. Weiler, eds., 1997).

A New World Order: Government Networks and the Disaggregated State, book manuscript in progress

A Liberal Theory of International Law, monograph in progress.

ARTICLES

A Decent Respect for the Opinions of Mankind? American Judicial Exceptionalism (forthcoming in a volume edited by Michael Ignatieff, 2003).

Global Government Networks, Global Information Agencies, and Disaggregated Democracy (forthcoming in a volume edited by Karl-Heinz Ladeur, 2003).

The Ordinary Business of Global Governance, with Some Extraordinary Implications DAEDALUS (forthcoming, 2002).

An International Constitutional Moment, with William Burke-White, 43 HARVARD INTERNATIONAL LAW JOURNAL 1 (2002).

The Accountability of Government Networks, 8 INDIANA JOURNAL OF GLOBAL LEGAL STUDIES 347 (2001).

Considering Compliance, with Kal Raustiala, in HANDBOOK OF INTERNATIONAL RELATIONS, (Walter Carlsnaes, Thomas Risse, and Beth Simmons, eds., 2001).

Breaking Out: The Proliferation of Actors in the International System in GLOBAL LEGAL PRESCRIPTIONS: THE PRODUCTION AND EXPORTATION OF A NEW STATE ORTHODOXY (Bryant G. Garth and Yves Dezalay, eds., 2000).

Agencies on the Loose? Holding Government Networks Accountable in TRANSATLANTIC REGULATORY COOPERATION (George A. Bermann, Matthias Herdegen and Peter Lindseth, eds, 2000).

Building Global Democracy, 1 CHICAGO JOURNAL OF INTERNATIONAL LAW 223 (2000).

Virtual Visibility, FOREIGN POLICY 84(November/December 2000).

A Liberal Theory of International Law in PROCEEDINGS OF THE 94TH ANNUAL MEETING (American Society of International Law, 2000).

Judicial Globalization, 40 VIRGINIA JOURNAL OF INTERNATIONAL LAW 1103 (2000).

The Future of International Legal Regimes, with Abram Chayes, in NATIONAL SECURITY AND INTERNATIONAL LAW: THE UNITED STATES AND THE INTERNATIONAL CRIMINAL COURT (Sarah Sewall, ed., 2000).

Plaintiff's Diplomacy, with David Bosco, 79 FOREIGN AFFAIRS 102 (2000).

Introduction: Legalization and World Politics, with Judith Goldstein, Miles Kahler, and Robert O. Keohane, 54 INTERNATIONAL ORGANIZATION 385 (2000).

Legalized Dispute Resolution: Interstate and Transnational, with Robert O. Keohane and Andrew Moravcsik, 54 INTERNATIONAL ORGANIZATION 457 (2000).

The Concept of Legalization, with Kenneth W. Abbott, Robert O. Keohane, Andrew Moravcsik, and Duncan Snidal, 54 INTERNATIONAL ORGANIZATION 401 (2000).

Government Networks: The Heart of the Liberal Democratic Order in DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW 199 (Gregory H. Fox and Brad R. Roth, eds., 2000).

Governing the Global Economy through Government Networks in THE ROLE OF LAW IN INTERNATIONAL POLITICS 177 (Michael Byers, ed., 2000).

Memorandum to the President in TOWARD AN INTERNATIONAL CRIMINAL COURT: THREE OPTIONS PRESENTED AS PRESIDENTIAL SPEECHES 1 (Council on Foreign Relations, Alton Frye, Project Director, 1999).

The Method is the Message, with Steven R. Ratner, 93 AMERICAN JOURNAL OF INTERNATIONAL LAW 410 (1999).

Court to Court, 92 AMERICAN JOURNAL OF INTERNATIONAL LAW 708 (1998).

International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship, 92 AMERICAN JOURNAL OF INTERNATIONAL LAW 367 (1998).

Revisiting the European Court of Justice, with Walter Mattli, 52 INTERNATIONAL ORGANIZATION 177 (1998).

Pushing the Limits of the Liberal Peace: Ethnic Conflict and the 'Ideal Polity' in INTERNATIONAL LAW AND ETHNIC CONFLICT 128 (David Wippman, ed., 1998).

The Role of National Courts in the Process of European Integration: Accounting for Judicial Preferences and Constraints, with Walter Mattli, in THE EUROPEAN COURTS AND NATIONAL COURTS: DOCTRINE AND JURISPRUDENCE 253 (Anne-Marie Slaughter, Alec Stone Sweet, and Joseph H.H. Weiler, eds., 1997).

The Real New World Order, 76 FOREIGN AFFAIRS 183 (1997).

Toward a Theory of Effective Supranational Adjudication, with Laurence Helfer, 107 YALE LAW JOURNAL 273 (1997).

Extraterritoriality and Discovery, with David Zaring, in CURRENT LEGAL ISSUES IN INTERNATIONAL COMMERCIAL LITIGATION 72 (Cheong, Chan-Wing, Ho Hock Lai, Beng, Lee-Eng, and Loon, Ng-Loy Wee, eds., 1997).

Constructing the European Community Legal System from the Ground Up: The Role of Individual Litigants and National Litigants and National Courts, with Walter Mattli, European University Institute Working Paper RSC No. 96/56.

International Law in a World of Liberal States, 6 EUROPEAN JOURNAL OF INTERNATIONAL LAW 503 (1995).

Liberal International Relations Theory and International Economic Law, 10 AMERICAN UNIVERSITY JOURNAL OF INTERNATIONAL LAW AND POLICY 1 (1995).

Law and Politics in the European Union: A Reply to Garrett, with Walter Mattli, 49 INTERNATIONAL ORGANIZATION 183 (Winter 1995).

The Liberal Agenda for Peace: International Relations Theory and the Future of the United Nations, 4 TRANSNATIONAL LAW AND CONTEMPORARY PROBLEMS 377 (1994).

A Typology of Transjudicial Communication, 29 UNIVERSITY OF RICHMOND LAW REVIEW 99 (1994).

Nationalism v. Internationalism: Another Look, 26 NEW YORK UNIVERSITY JOURNAL OF INTERNATIONAL LAW AND POLICY 585 (1994).

Introductory Note, with Carl Kaysen, in EMERGING NORMS OF JUSTIFIED INTERVENTION 7 (Laura W. Reed & Carl Kaysen eds., 1993).

New Directions in Legal Research on the European Community, 391 JOURNAL OF COMMON MARKET STUDIES 31 (1993).

International Law and International Relations Theory: A Dual Agenda, 87 AMERICAN JOURNAL OF INTERNATIONAL LAW 205 (1993).

Europe Before the Court: A Political Theory of Legal Integration, with Walter Mattli, 47 INTERNATIONAL ORGANIZATION 41 (1993).

Liberal States: A Zone of Law, Paper Presented at the 1992 Annual Meeting of the American Political Science Association.

Democracy and Judicial Review in the European Community, 1992 UNIVERSITY OF CHICAGO LEGAL FORUM 81 (1992).

Law Among Liberal States: Liberal Internationalism and the Act of State Doctrine, 92 COLUMBIA LAW REVIEW 1907 (1992).

Toward an Age of Liberal Nations, 33 HARVARD JOURNAL OF INTERNATIONAL LAW 393 (1992).

Regulating the World: Multilateralism, International Law, and the Projection of the New Deal Regulatory State in MULTILATERALISM MATTERS (John Ruggie, ed., 1992).

Comment on Intervention against Illegitimate Regimes in LAW AND FORCE IN THE NEW INTERNATIONAL ORDER (Lori Fisler Damrosch and David Scheffer, eds., 1991).

Revolution of the Spirit, 3 HARVARD HUMAN RIGHTS JOURNAL 1 (1990).

Panel Discussion: Options for a Law-Abiding Policy in Central America, 10 BOSTON COLLEGE THIRD WORLD LAW JOURNAL 215 (1990).

The Once and Future German Question, 68 FOREIGN AFFAIRS 65 (1990).

The Alien Tort Statute and the Judiciary Act of 1789: A Badge of Honor, 83 AMERICAN JOURNAL OF INTERNATIONAL LAW 461 (1989).

Pursuing the Assets of Former Dictators in PROCEEDINGS OF THE 81ST ANNUAL MEETING 401 (American Society of International Law, 1987).

Restoration and Reunification: Eisenhower's German Policy in REEVALUATING EISENHOWER: AMERICAN FOREIGN POLICY IN THE FIFTIES (Richard A. Melanson and David Mayers, eds., 1987).

COMMENTARY

Frequent press, radio, and television interviews on international tribunals, terrorism, and international law.

“Al-Qaeda Should Be Tried Before the World,” *The New York Times*, November 17, 2001.

“Terrorism and Justice: An International Tribunal Comprising US and Islamic Judiciary Should Be Set Up to Try Terrorists,” *The Financial Times* (London), October 12, 2001.

“A Defining Moment in the Parsing of War,” *The Washington Post*, September 16, 2001.

“Sue Terrorists, Not Terrorist States,” (with David Bosco), *The Washington Post*, October 28, 2000.

“On a Foreign Death Row,” *The Washington Post*, April 14, 1998.

BOOK REVIEWS

Are Foreign Affairs Different? 1980 HARVARD LAW REVIEW 106 (1993) (reviewing THOMAS M. FRANCK, POLITICAL QUESTIONS/JUDICIAL ANSWERS: DOES THE RULE OF LAW APPLY TO FOREIGN AFFAIRS? (1992)).

Book Note, 87 AMERICAN JOURNAL OF INTERNATIONAL LAW 671 (1993) (reviewing ELIZABETH ZOLLER, DROIT DES RELATIONS EXTÉRIEURES (1992).

Book Note, 87 AMERICAN JOURNAL OF INTERNATIONAL LAW 166 (1993) (reviewing MICHAEL J. GLENNON, CONSTITUTIONAL DIPLOMACY (1990).

Book Note, 86 AMERICAN JOURNAL OF INTERNATIONAL LAW 415 (1992) (reviewing LOUIS HENKIN, CONSTITUTIONALISM, DEMOCRACY, AND FOREIGN AFFAIRS (1990).

OTHER ACTIVITIES

Presenter and participant at over 100 conferences, debates, and public events a year.

Member, Council on Foreign Relations

Chair, Term Membership Committee, Council on Foreign Relations

Member, Task Force on the Expansion of NATO, Council on Foreign Relations

Faculty Member, MIT Seminar XXI

Trustee, World Peace Foundation

Member, Board of Editors, *International Organization*

Member, Board of Editors, *American Journal of International Law*

Member, Advisory Board, *UCLA Journal of International Law and Foreign Affairs*

Member, Board of Advisors, *Virginia Journal of International Law*

Member, Board of Advisors, *Columbia Journal of European Law*

Member, Editorial Advisory Board, *Texas International Law Journal*

Chair, American Society of International Law (ASIL) Committee on Annual Awards (1999-2000)

Co-Chair, Research Committee, American Society of International Law (ASIL)

Co-Chair, Program Committee for the 1994 Annual Meeting of the American Society of International Law (ASIL)

Member, Executive Council, American Society of International Law (ASIL), 1992-94

Member, Organizing Committee, Trilateral Project among the American Society of International Law (ASIL), the Japanese Association of International Law, and the Canadian Council on International Law

Member, Committee on International Security Studies, American Academy of Arts and Sciences

Term Member, Council on Foreign Relations, 1987-1992

Member, Executive Committee, Chicago Committee on Foreign Relations

Member, Strategy Committee, Project on Justice in Times of Transition, John F. Kennedy School of Government

Hauser Center Faculty Fellow, Harvard University

Affiliate for European Studies, Harvard University

Member, Standing Committee on European Studies, Harvard University

Member, Executive Committee, Weatherhead Center for International Affairs, Harvard University

Co-Chair, ABA Committee on Public International Law

Member, ABA Standing Committee on World Order Under Law, 1992-1995

Member, Advisory Council, Princeton University Department of Politics

Periodic Lecturer, American Council of the United Nations (ACUNS)

International Regimes Database, Advisory Committee

Member, International Law Association

Member, International Council, Institute for Global Legal Studies of the School of Law of Washington University in St. Louis

Member, Organizing Committee, Chicago Lawyers Committee for International Human Rights

Coordinator, Foreign Policy Issues Network, Dukakis for President, August 1987 to January 1988

PERSONAL

Formerly Anne-Marie Burley

Languages: fluent French, semi-fluent German, reading knowledge of Spanish

[END]

D25 Hamdan Defense Supplement to synopsis - Slaughter. 21 Oct 04

Please find, as per your request, a more detailed synopsis of the testimony. The synopsis also explains why live testimony is important, from the witness's perspective. I have separately, in our motion under POM #10, explained why we believe the witness' testimony is important from the perspective of the Defense, including the need to ensure that the Presiding Officer does not unduly influence the proceedings as the only lawyer. These concerns are at their height given the decision today by the appointing authority to reduce the size of the commission to three members, meaning that the spectre of undue influence by the Presiding Officer (which would, as we have said, be unintentional yet predictable) is at its height.

Anne-Marie SLAUGHTER SYNOPSIS OF WITNESS' TESTIMONY

1. I am the Dean of the Woodrow Wilson School of Public and International Affairs at Princeton University. I also served as President of the American Society of International Law for a two year term ending in March 2004.
2. I received a J.D. from Harvard Law School and an M.Phil. and D.Phil. in International Relations from Oxford University. My B.A. is from Princeton University.
3. I have taught courses in international litigation, international regulatory cooperation, public international law, and international law and international relations. I have written over fifty articles in the area of international law and international relations, and have twice received the Francis Deak Award for best article by a younger scholar in the *American Journal of International Law*. My writings include work on international legal regimes, human rights, transnational regulatory cooperation, universal jurisdiction, the Act of State doctrine, the effectiveness of supranational adjudication, the European Court of Justice, judicial globalization, international criminal law, international administrative law, and the legalization of international regimes.
4. I serve on the Board of Directors of the United States Council on Foreign Relations and the World Peace Foundation. I have also served on the Board of Editors for numerous international journals, including the *American Journal of International Law* and the journal *International Organization*.
5. If called before the Tribunal, I would testify as the applicability of the Geneva Conventions to this case. I would testify that the Geneva Conventions include a presumption that a combatant captured by a foreign government is protected by the conventions until and unless proven otherwise through a judicial proceeding.

Article 5 of the Geneva Convention Relative to the Treatment of Prisoners of War makes clear that “Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.” As all captured combatants are presumed to be protected, any judicial status determination must comply with the obligations set forth in the Conventions. Hence, the protections of the Convention must, at the least, apply up through a judicial status determination.

6. In addition, I would testify to the intention of the drafters of the Conventions to include the widest possible definition of protected persons. The categories of protected persons enumerated in Article 4 of the Convention represent what was, in 1949, the broadest conceivable definition of enemy combatants given the nature of warfare as it was then known. The Additional Protocols of 1977 continued the tradition of extending protection to the broadest possible conception of civilians and enemy combatant detainees. This intent suggests that the scope of protected combatants should be construed broadly in this case.
7. Third, I would testify that, even if a particular individual is not protected by the text of the Convention itself or has been determined to be a non-protected combatant after a judicial process, customary international law nonetheless offers a broad range of protections regulating the detention of and judicial processes against combatants. While not drawn specifically from the text of the Geneva Conventions, the relevant body of customary international rules incorporates many of the protections afforded in the Conventions themselves.
8. In short, all individuals captured in a conflict by a foreign government are accorded a minimum standard of treatment. For example, the right to a free and fair trial is recognized around the globe, by all major political, social, religious, and cultural systems. The Universal Declaration of Human Rights states that everyone “is entitled in full equality to a fair and public hearing by an independent and impartial tribunal.” Even in times of war, Common Article 3 to the Geneva Conventions requires that anyone accused of a crime, be afforded “all the judicial guarantees which are recognized as indispensable by civilized peoples.” The International Covenant on Civil and Political Rights, the Inter-American Convention on Human Rights, the Cairo Declaration on Human Rights in Islam, and the Charter of the Fundamental Rights of the European Union all contain similar guarantees of judicial process. The customary rules which have arisen from these diverse treaties and a long history of state practice require that, even where the Geneva Conventions do not specifically apply, the general principles embodied in those conventions remain applicable.
9. Finally, I would testify that both the Geneva Conventions and the relevant rules of customary international law are binding on US Courts and on military commissions set up by the United States government. The United States ratified

the Geneva Conventions in 1955 and, in accordance with Article IV of the US Constitution, the Conventions constitute “the Supreme Law of the Land.” Furthermore, US Courts have long held that they are bound by customary international law as well as international treaties.

10. The arguments I would present to the tribunal are highly relevant to the case at hand. A critical question in this case is whether defendant, a citizen of Yemen captured in Afghanistan, is protected by the Geneva Conventions. The scope of the conventions’ protections, the intent of the drafters, and the relevant customary legal rules have direct bearing on defendant’s legal status. Furthermore, whether US courts are bound to apply and uphold these rules is essential to determining the relevant law the tribunal must apply.
11. To date I have not addressed these particular issues in print in my published work. While I have written on the legal responses to terrorism, the principle of civilian inviolability, and the use of courts in prosecuting war criminals and terrorists, the issues raised in this case and outlined above have not been the focus of my published writings to date. In addition, my presentation would involve responding to new claims raised by the Government subsequent to any of my previous publications.

UNITED STATES OF AMERICA

V.

SALIM AHMED HAMDAN

PROSECUTION RESPONSE TO
DEFENSE REQUEST FOR
WITNESS: ANNE-MARIE
SLAUGHTER

25 October 2004

The Prosecution in the above-captioned case hereby files the following response and notification of intent not to produce in accordance with paragraph 6 of POM 10. In support of this response, the Prosecution answers the Defense's Request for Witness as follows:

1. Response to paragraph 2. The Prosecution has no objections or supplements to this paragraph.
2. Response to paragraph 3. The Prosecution does not contest the content of the proffer. However, the Defense must assert why the witness' *testimony* will be relevant. Most of the motions pending before this Commission are motions on purely legal matters. It is the function of the written motion to define the law as it applies to one's case and to then supplement this written motion with oral argument that can also be responsive to any particularized questions of the finders of law. Expert witnesses are not needed for this purpose. To the extent that experts in the field have written on an issue that is the specific subject of a motion, that article can be cited and even appended to the motion. If the legal-expert has experience and understanding of the subject matter of the motion but has not written specifically on the topic, that expert can be approached as a consultant to a party and can help construct the brief and the oral argument

The Defense has clearly demonstrated the capability to argue their legal theories. There appears to be a great danger in permitting this expert testimony. The Defense in their witness request for Dean Slaughter stated her views are “authoritative on the questions raised in these motions.” It is clear that the Defense sees this expert serving in a quasi-judicial function, not allowed in any court of law, court-martial, or military commission. This statement alone shows the danger that this witness may usurp the authority of the Commission in determining what the law is.

Finally, while we appreciate the Defense's concern that the Commission may need further assistance in understanding the law beyond the initial arguments that the counsel assigned to this case can provide, we do not feel that using the Defense's hand-picked experts are the solution. In voir dire, the Presiding Officer stated that should questions of the Commission desire greater assistance in understanding a question of law, he would permit counsel for both sides to present their views on the matter to the Commission to assist in getting the Members the additional help they desire. (Transcript page 23). Defense stated in voir dire that the Commission members will have to carefully study "international treaties, the customs and practice as established by military regulations, handbooks, and international cases throughout the world, as well as the Constitution of the United States, federal judicial opinions and federal statutes." See Hamdan transcript, page 42. Defense asked if the members were up to the task and they replied that they were. Until such time as the members claim to be unable to determine the law despite reading of the parties' briefs, hearing the parties' oral argument, and conducting their own research, expert testimony is neither relevant nor helpful.

3. Response to paragraph 4. The Prosecution has no objections or supplements to this paragraph.

4. Response to paragraph 5. The Prosecution has no objections or supplements to this paragraph.

5. Response to paragraph 6. The Defense asserts that Dean Slaughter is available to testify at Guantanamo on November 8, 2004. While we do not know the travel availability of Dean Slaughter, it is our understanding that ingress and egress to Guantanamo is usually at least a three day process. Furthermore, November 8th is a Monday and we are not aware of any flights into Guantanamo on Sundays.

6. Response to paragraph 7. To the extent that the Prosecution's response to paragraph 3 contains arguments on both relevance and the need for this witness to testify live, that response is hereby incorporated. Additionally, the Defense provides no reasons why testimony by this witness, if allowed, could not be taken by telephone or video teleconference (VTC).

7. Response to paragraph 8. The Defense states that "No other witness can be called to attest to the relationship between international law and military commissions." It appears from the proffers for Professor Danner (who has knowledge based on her academic writings and teachings, which focus on the history, development, and substance of international criminal law, including the laws of war) and Professor Paust (presented as an expert on both military commissions and international law) that this witness is cumulative.

8. Response to paragraph 9. Paragraph 9 of the Defense request is not compliant with POM 10. POM 10, paragraph 4i requires that the Defense state the law that requires the production of this witness. None is cited.

9. Conclusion. The Prosecution has a motion pending before the Commission, the decision of which would affect the production of this witness. Therefore, the Prosecution requests that the Commission defer its ruling on this issue until the Motion is decided. If the pending Motion is decided in favor of the Defense, the Prosecution still requests that the production of this witness be denied. From the proffer, it is clear that the Defense had consulted with the witness and has obtained the value of her input. If they have not used this value in their motions to date, they can do so in their replies¹ or in oral argument. While live “law expert” witness testimony may add to the media attention dedicated to these proceedings, there has been no showing as to why the briefs and oral arguments of the parties assigned to this case are insufficient.

XXXX
Commander, U.S. Navy
Prosecutor

¹ On 21 October, the Defense requested a delay in filing replies to the Prosecution’s responses to their motions. They now have plenty of time to incorporate whatever they have learned from these experts into their replies.

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)	DEFENSE REPLY TO
UNITED STATES OF AMERICA)	PROSECUTION RESPONSE TO
)	DEFENSE REQUEST FOR
v.)	WITNESS: ANNE-MARIE
)	SLAUGHTER
SALIM AHMED HAMDAN)	
)	27 October 2004
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1. Reply regarding paragraph 3. The prosecution continues its blatant attempt to hide relevant law, as well as testimony about the history of the law, from the commission through this legal maneuver. The Defense has explained, in detail, precisely why the witness' *testimony* will be relevant. We have detailed precisely why this commission must hear from Dean Slaughter of Princeton University, insofar as she is the foremost expert on international law and the Geneva Conventions. Indeed, Dean Slaughter has just concluded serving as the President of the American Society of International Law.

As the supplemental material makes clear, Dean Slaughter has published work that bears on these questions, but has not applied that work to this specific prosecution. That is the function of her testimony, and for this reason, merely incorporating her past work into a defense brief of some kind would not be appropriate. Indeed, everyone would expect that a move like that would be resisted by the Prosecution precisely on grounds of relevance. And it makes absolutely no sense why testimony can be admitted in one form (like writing), but not another (live).

Incorporation of Dean Slaughter's work into a defense brief is inappropriate for a second reason, because she is not in any way a defense counsel. The whole function of experts about international law is precisely to make sure that the relevant conclusions can be cross examined by both sides. Barring that testimony in lieu of some submission alongside a brief would make such examination impossible.

The Prosecution provides not a *single* case in which a mixed body of lawyers and nonlawyers has *ever* rejected expert testimony about the law. The Prosecution is simply making up a legal rule by taking precedents from other institutions when the very rules of evidence that govern *this* commission are different. Even under Federal Rule 702, which governs courts where the responsibility for deciding fact and law are separated, courts admit the testimony of professors of international law all the time. The prosecution cites irrelevancies about the *Yamashita* case and tries to make an argument about how expert testimony is not relevant. Nothing could be farther from the truth: the testimony goes to

the very heart of the motions being decided by the commission. And because this commission is the trier of both fact and law under the President's Order, the testimony is not only important, it is essential. It would constitute reversible error for the commission to proceed without it.

Unable to marshal even one case to support their bizarre contention, the Prosecution must resort to mischaracterizing the defense's request, asserting that somehow an expert will "usurp the authority of the Commission" and serve "a quasi-judicial function." Nothing could be further from the truth. The function of an expert is to illuminate the law and to explain the history behind it. It is NOT to decide it. In several previous filings with this commission, we have explained that the role of an Expert is confined in this way.

The prosecution is free to cross examine an expert witness, to explain why they believe the expert is wrong, and to present witnesses of their own in compliance with commission rules. But to say that the witness must be excluded because her views will decide the matter for the commission is not only premature, it is wrong. The testimony will do nothing more than explain her view of what the law is and why it looks that way. The commission is of course free to disregard the views of the expert at any point. That is precisely why, in voir dire, the Defense made sure that the commission was willing to hear arguments based upon international law. The fact that the Members have agreed to be willing to hear and decide these matters militates *for* the testimony (not against it, as the Prosecution contends in its papers), because it shows both the relevance of the testimony as well as the stated capability of the Commission to decide these matters.

2. Response to paragraph 6. No logistical difficulties with the transportation and testimony of the expert witness have yet arisen. The defense will deal with them at that time if they do so arise.

3. Response to paragraph 7. The defense has explained the relevance of the testimony, as well as why live testimony is greatly needed. Without live testimony, the impact of the witness will be much diminished, and the witness' ability to react to questions posed by both sides in the motion argument will be weakened considerably. The Defense did not ask for a delay in the Proceeding to accommodate the Dean's testimony and as such did not present alternatives.

4. Response to paragraph 8. The testimony of Dean Slaughter is in no way cumulative with that of any other witness. Dean Slaughter is the foremost expert on the meaning and reach of the Geneva Conventions. Furthermore, the appropriate test is whether the expert has the expertise sought and whether the testimony is relevant to the subject, not whether she is the only possible expert. The defense notes that the Dean is not being paid for the testimony and as such whether a suitable alternative is available is not at issue.

5. Response to paragraph 9. The Defense request easily complies with POM 10. The defense has cited numerous cases where expert testimony has been admitted and been found helpful in helping the legal institution decide what the law is and why it looks

the way it does. To deny it would be in violation of the President's Order, which requires a "full and fair trial."

The defense agrees that the Prosecution's motion to preclude the testimony of the defense experts, if granted by the Commission as a whole, would be dispositive on the issue. Unless and until that occurs, however, there is no reason to prevent this testimony from going forward. Indeed, the Prosecution offers no explanation of how, if the Commission's full membership were to rule against the Prosecution's motion to preclude the testimony of the experts, there would be any basis to preclude Dean Slaughter's production, particularly when the standard for testimony and evidence is probative to a reasonable person.

It is notable that the Prosecution seeks to enter, on the *merits*, evidence under this very evidentiary standard that would not be admissible in any court in America. It then, under the *very same standard*, tries to bar the Defense the opportunity to enter relevant expert testimony on a *motion*. This is a wrongheaded move, one can only taint the fairness of these proceedings.

Indeed, the failure to produce Dean Slaughter when the Commission as a whole has not ruled on the matter is a calculated and clear attempt to influence the Commission's decision by requiring the Commission to delay the proceedings to obtain the testimony. Given that two of the Commission members remain responsible for their normal duties during the disposition of the Commission and that proceedings may only be heard in Guantanamo, delay requires these Commission members to suffer additional disruption in their work and personal lives if they were to rule in favor of the Defense. As such production of the witness is appropriate in order not to prejudice or appear to prejudice the Commission's decision.

5. Conclusion. The testimony of this expert is essential in giving the commission a fair picture about the complexity and history behind the issues being decided by the commission. Even the Prosecution has not provided a single precedent that *prohibits* the testimony of this expert. To the contrary, similar testimony is given in federal courts all the time. Indeed, the case for such testimony is far stronger here. Given the particular nature of (a) these claims and (b) this type of proceeding (commission composed of non-lawyers) it is pragmatically advisable to let this expert testify.

Finally, the Defense insists that the full membership of the Commission rule on this matter in a written opinion with reasons. In particular, the opinion should address the following two questions in explaining why the witness will or will not be produced: Is this expert's testimony permissible under the rules of the commission? If not, how can such a decision can be squared with the permissive rules of evidence set by the President to govern these commissions and the fact that this is a mixed body to determine law and fact? It is unquestioned that the witness is an expert knowledge relevant to this commission's adjudication of matters before it.

We further request that this motion, and the government's response, as well as the final written decision by the full commission, be made public and part of the record in this case.

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From: XXXX. CIV (L)
Sent: Friday, October 29, 2004 3:00 PM
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Subject: US v. Hamdan, Decision of the Presiding Officer, D25

United States v. Hamdan

Decision of the Presiding Officer, D25

The Presiding Officer has denied the request for production of Anne Marie Slaughter as a witness. The Presiding Officer did not find that she is necessary. See Military Commission Order 1, section 5H. Accordingly, this request has been moved from the active to the inactive section of the filings inventory in accordance with POM 12. See also paragraph 8, POM 12.

By Direction of the Presiding Officer

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UNITED STATES OF AMERICA)	
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)	DEFENSE MOTION -
v.)	THE ENTIRE COMMISSION
)	TO GRANT PRODUCTION OF
)	WITNESS DENIED IN D 25
)	
HAMDAN)	ANNE MARIE SLAUGHTER
)	

October 29, 2004

The Defense previously requested that the above witness be produced. As the documents referenced below make clear, this expert is one of the foremost authorities in the United States, indeed, the world. She previously served as the President of the American Society for International Law and is presently the Dean of the Woodrow Wilson School at Princeton University. The request for production of this witness was denied by the Presiding Officer under the provisions of Military Commission Order 1, section 5H.

The Defense requests the Commission direct the production of the witness, and that the Commission consider the following previously made filings, and the attachments thereto, per the Filings Inventory, in making its determination.

- a. Motion by the defense for the production of the above witness.
- b. Decision of the Presiding Officer denying the witness.
- c. The government response to this motion.
- d. The government reply to this motion.

The defense also renews its statement that this motion must be decided by the full commission, as per Section 4 (c)(2) of President Bush's Military Order dated 13 November 2001, and that the reasons for granting or denying the motion be specified in detail and in writing on the record.

By: _____
 Neal Katyal
 Civilian Defense Counsel